

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RUSSELL MARTINEZ,

Plaintiff,

vs.

No.

JOSEPH SALAZAR, in his individual capacity,
GREG ESPARZA, in his individual capacity,
THE ESPANOLA DEPARTMENT OF PUBLIC
SAFETY, LEO MONTOYA, THE CITY OF
ESPANOLA, MARVIN ARMIJO, in his official
capacity, ANTHONY ARMIJO, in his official
capacity, JAMES CULIN, in his individual capacity,
MANUEL VALDEZ, in his individual capacity,
GUY JORDAN, in his individual capacity, THE
BOARD OF COUNTY COMMISSIONERS OF
RIO ARRIBA COUNTY, THE RIO ARRIBA
COUNTY SHERIFF'S OFFICE, THOMAS
RODELLA, in his individual and official capacities,
LARRY DEYAPP, in his individual and official
capacities, UNKNOWN NUMBER OF JOHN DOES,
employees of the Rio Arriba County Adult Detention
Facility, in their individual capacities, and FERNANDO
BAYARDO, M.D.,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441(b) and 1446(a) and (b), Defendants Joseph Salazar, Greg Esparza, the Espanola Department of Public Safety, Leo Montoya and the City of Espanola, by and through their undersigned counsel, Basham & Basham, P.C. (Mark A. Basham, appearing); and Defendants Marvin Armijo, Anthony Armijo, James Culin, Manuel Valdez, Guy Jordan, the Board of County Commissioners of Rio Arriba County, the Rio Arriba County Sheriff's Office, Thomas Rodella and Lawrence DeYapp, by and through their counsel of record, Yenson, Allen & Wosick, P.C. (Robert W. Becker, appearing), give Notice of Removal to this Court of the civil

action filed in the First Judicial District Court for the State of New Mexico, County of Rio Arriba, Cause No. D-117-CV-2014-00159, by Russell Martinez, Plaintiff, and as grounds therefore state:

1. On May 5, 2014, Plaintiff filed a Complaint for Damages Resulting from Civil Rights Violations, Intentional Torts, Negligence and Violations of Title II of the Americans with Disabilities Act with the First Judicial District Court. A copy of the Complaint is attached hereto as Exhibit A.

2. Defendant Rio Arriba County Board of County Commissioners was served by mail on May 8, 2014. See letter attached as Exhibit B. Defendant City of Espanola was served by mail on May 9, 2014. Counsel for Defendants Joseph Salazar, Greg Esparza, the Espanola Department of Public Safety and Leo Montoya acknowledged service of the Summons and Complaint on June 6, 2014. See Acknowledgment of Service attached as Exhibit C. Counsel for Defendants Marvin Armijo, Anthony Armijo, James Culin, Manuel Valdez, Guy Jordan, the Rio Arriba County Sheriff's Office, Thomas Rodella and Lawrence DeYapp acknowledged service of the Summons and Complaint on June 6, 2014. See Acknowledgment of Service attached as Exhibit D. Defendant Fernando Bayardo, M.D. has not been served as of this date.

3. This Notice of Removal is timely as it was filed within thirty (30) days of proper service of the Complaint on May 8, 2014 and June 6, 2014, respectively, on the first and last served Defendants.

4. All served Defendants, by and through their undersigned counsel, consent to the removal of this action.

5. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the

First Judicial District Court, County of Rio Arriba, State of New Mexico.

6. The claims stated against Defendants that are subject to the original jurisdiction of this Court pursuant to 28 U.S.C. 1331 and 1343(a)(3) and (4) are as follows:

- a. Count I of Plaintiff's Complaint, alleging excessive force under the Fourth and Fourteenth Amendments to the U.S. Constitution. Exhibit A, p. 16, ¶¶ 93-98.
- b. Count IV of Plaintiff's Complaint, alleging deliberate indifference to conditions of confinement in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution, Exhibit A, pp. 18-19, ¶¶ 112-118.
- c. Count V of Plaintiff's Complaint, alleging deliberately indifferent denial of medical care in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution. Exhibit A, pp. 19-20, ¶¶ 119-125.
- d. Count VI of Plaintiff's Complaint, alleging a conspiracy to violate Plaintiff's constitutional rights under the Fourth and Fourteenth Amendments to the U.S. Constitution. Exhibit A, pp. 20-21, ¶¶ 126-133.
- e. Count VII of Plaintiff's Complaint, alleging a supervisory and municipal liability claim pursuant to 42 U.S.C. § 1983 for violation of Plaintiff's Fourth and Fourteenth Amendment rights. Exhibit A, pp. 21-23, ¶¶ 134-148.
- f. Count VIII of Plaintiff's Complaint, alleging a denial of a prompt probable cause determination in violation of Plaintiff's rights under the Fourth and Fourteenth Amendments to the U.S. Constitution. Exhibit A, p. 23, ¶¶ 149-154.
- g. Count IX of Plaintiff's Complaint, alleging a supervisory and municipal liability claim pursuant to 42 U.S.C. § 1983 for violation of Plaintiff's Fourth and Fourteenth Amendment rights. Exhibit A, pp. 23-24, ¶¶ 155-165.
- h. Count X of Plaintiff's Complaint, alleging a violation of Title II of the Americans with Disabilities Act. Exhibit A, pp. 24-25, ¶¶ 166-171.

7. Federal questions thus appear on the face of Plaintiff's Complaint. The Court also

has supplemental jurisdiction over Plaintiff's state law claims in Counts II-III, XI-XIII pursuant to 28 U.S.C. § 1367, as these claims are so related to the federal question claims which this Court has original jurisdiction over that they form part of the same case or controversy under Article III of the U.S. Constitution. See Exhibit A, Count II, p. 17, ¶¶'s 94-104; Count III, pp. 17-18, ¶¶'s 105-111; Count XI, pp. 25-26, ¶¶'s 172-176; Count XII, pp. 26-27, ¶¶'s 177-182 and Count XIII, pp. 27-28, ¶¶'s 183-191.

8. Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendants will file a Notice of Filing of State Court Record and certified copies of the pleadings filed in the First District Court for the State of New Mexico, County of Rio Arriba, Cause No. D-117-CV-2014-00159, within thirty (30) days of filing this Notice of Removal. A Civil Cover Sheet is attached as Exhibit E.

BASHAM & BASHAM, P.C.

By: /s/ **Mark A. Basham**
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I HEREBY CERTIFY that on the 6th day of
June, 2014, I filed the foregoing
electronically through the CM/ECF System
and by email to the following parties:

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/s/ **Robert W. Becker**

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